

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

IN RE: Charles Ernest Helmick
Marcese Elline Helmick
Debtor

ORDER

Case number: 09-50244

MARCESE ELLINE HELMICK
Plaintiff

v.

GARY GRAY
Defendant(s)

THIS CAUSE came to be heard on August 13, 2009 upon papers previously filed; upon Debtors/Plaintiffs motion to avoid a judicial lien pursuant to 11 U.S.C. 522(f); upon proper service of said motion by first class mail addressed to the Defendant pursuant to the Bankruptcy Rules; upon the failure of Defendant to file a responsive pleading or otherwise appear before this Court; upon the presence of the Debtor(s) by counsel; and was argued.

The Court hereby makes the following findings of fact and conclusions of law:

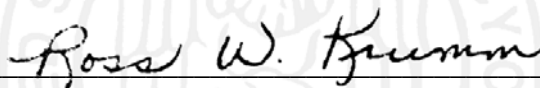
1. That the Debtor/Plaintiff has filed a petition for relief under Chapter 7 of Title 11 of the United States Code in the captioned case.
2. This is a core proceeding and this Court has jurisdiction over this issue pursuant to 28 U.S.C. sections 157 and 1334.
3. The Defendant Gary Gray is in default for the failure to file a responsive pleading or otherwise appear before the Court.
4. That the Defendant Gary Gray has obtained and docketed a judicial lien against the Debtor(s)/plaintiff(s), recorded in the Clerk's Office of the Circuit Court of Augusta County, Virginia, in Judgment record no. 090000034. Said judgment is in the amount of \$9,132.70

with additional interest and court costs, and was entered by the General District Court of the City of Roanoke, Virginia on January 9, 2009.

5. The Debtor/Plaintiff has and holds a legal interest in real estate located in Augusta County with a mailing address at 28 Fairfield Drive, Staunton, Virginia whose value is established at Two Hundred Forty Thousand Dollars (\$240,000.00).
6. That Debtor/Plaintiff owes a debt to Wells Fargo Home Mortgage which is secured by a First Deed of Trust in the aforesaid real estate. The value of the debt at the time of the bankruptcy petition filing was approximately Two Hundred Fifty Two Thousand, Five Hundred Ninety Three Dollars (\$252,593.00.)
7. Therefore, the Court holds and finds that the Debtor does not have equity in the real estate located in Augusta County, Virginia at the address of 28 Fairfield Drive, Staunton, Virginia.
8. The Debtor would be allowed and entitled to claim an exemption of Fifty Three Dollars (\$53.00) in this case pursuant to 11 U.S.C. §522(b) and Va. Code §34-4.
9. Said judgment has created a judicial lien which impairs an exemption to which the debtor would be entitled under 11 U.S.C. 522(b), and which does not secure a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record.

UPON CONSIDERATION WHEREOF, it appearing proper to the Court, it is accordingly ORDERED that the judicial lien in favor of Gary Gray in the amount of \$9,132.70, plus interest and costs, recorded in the Clerk's Office of the Circuit Court of the Augusta County, Virginia in Judgment record no. 090000034 shall be and is hereby avoided and shall no longer be a judicial lien against real estate or other property owned by the Debtors.

Enter this 21st day of August, 2009.


JUDGE

SEEN:

/s/ Roland S. Carlton, Jr.
Roland S. Carlton, Jr., Esq.
Counsel for the Debtors